Supreme Court, U.S.
FILED
MAR 2 2001
CLERK

No. 00-1089

IN THE

Supreme Court of the United States

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.,

Petitioner,

v.

ELLA WILLIAMS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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INTRODUCTION

The Sixth Circuit has ruled that Ella Williams is "disabled" in the major life activity of performing manual tasks without regard to whether she is disabled concerning the major life activity of working. Toyota Motor Manufacturing, Kentucky, Inc. ("Toyota") misstates the ruling of the Sixth Circuit and argues for an interpretation of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101, *et seq.* which would do away with the requirement that disability determinations be made on an individual basis and would further require that all ADA claimants be disabled as concerns the major life activity of working, contrary to the established precedent of *Bragdon v. Abbott*, 524 U.S. 624 (1998) and *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).

RELEVANT STATUTES AND REGULATIONS

42 U.S.C. § 12102(2)(A)[1] states disability[2] means "with respect to an individual–(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individuals; . . ."

29 C.F.R. § 1630.2(i) identifies major life activities such as performing manual tasks or working.

Impairments are considered to substantially limit major life activities if the individual is "Significantly restricted as

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1. Hereafter reference will be made only to the appropriate section of the ADA without reference to the Title number.

2. Only definitions of disability relevant to this case will be addressed.

to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." 29 C.F.R. § 1630.2(j)(1)(ii).

Three factors to be considered in determining whether an impairment substantially limits a major activity are: (1) nature and severity, (2) duration, and (3) permanent or long-term impact. 29 C.F.R. § 1630.2(j)(2)(i-iii).

As concerns *only* the major life activity of working, regulations state that in order to be substantially limited, the individual must be restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person. Importantly, the regulation provides *only* as concerns working, "The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working." 29 C.F.R. § 1630.2(j)(3)(i).

The ADA, § 12112(a), prohibits discrimination against qualified individuals with disabilities because of disability in regard to terms, conditions, and privileges of employment.

§ 12111(8) provides that a qualified individual with a disability means a disabled individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

"Reasonable accommodation" is not defined by a limiting definition but instead requires employers to accommodate disabled individuals unless to do so would constitute an "undue hardship." §§ 12111(9) and (10).

Importantly, an employer engages in prohibited discrimination when the employer fails to make reasonable accommodations to known physical or mental limitations of otherwise qualified individuals with a disability. §§ 12112(b)(5)(A).

FACTS

Ella Williams is 41 years of age, is married, and has children. She reads at the ninth grade level, and her mathematical skills are at the tenth grade level. She described her vocational background as "Production work and factory work's (sic) what I've known all my life."

She was first employed by Toyota, an automobile manufacturer, in 1990 and was able to perform her job in the paint department. Later, she was transferred to the power train group which was an assembly line job where she helped build car engines using pneumatic tools. This job caused her to develop carpal tunnel syndrome ("CTS"), and after being off work for several months, her physician returned her to work with medical restrictions on her activity.

In 1992, those restrictions were to do only light work, no lifting of more than 20 pounds occasionally and 10 pounds frequently, avoid constant repetitive use of both hands and arms, including flexion and extension of the wrists and elbows, avoid overhead work, and no use of pneumatic tools. Ms. Williams filed a workers' compensation claim against Toyota which was settled on the basis of a 20% occupational impairment.

In 1993, Ms. Williams sued Toyota under the ADA for not accommodating her disability by assigning her work she

could perform. That lawsuit was settled, and Ms. Williams returned to work at Toyota in December, 1993.

When she returned, she was assigned to quality control inspection operations in the body paint inspection group. These jobs did not require as much physical exertion as assembly line jobs and were not typical production line positions. They were the least physically demanding jobs in the plant.

There were four jobs in the new group: (1) assembly paint, (2) paint second inspection, (3) shell body audit, and (4) ED surface repair. Ms. Williams was required to perform only two of the four jobs; paint second inspection and assembly paint. These were primarily visual inspection jobs although some manual activity was required.

In the late summer or fall of 1996, Ms. Williams was asked to cross-train on the shell body audit job, and she agreed. The shell body job required her to soak a sponge in a highlight oil and wipe down part of the metal shell body of a car. A part of 450 to 500 car shell bodies had to be wiped down per shift with the allotted job time being about 58 seconds on each shell body. This job was more physically demanding than the paint inspection jobs she previously had been doing. The shell body job caused pain to her, and she sought care from Industrial Health Services, Inc. ("IHS") which is Toyota's on-site occupational medicine services provider. IHS doctors diagnosed Ms. Williams as suffering from (1) myotendonitis bilateral periscapular, an inflamation of muscles and tendons around both of her shoulder blades, (2) myotendonitis, (3) myositis bilateral forearms with nerve compression causing media nerve irritation, and (4) thoracic outlet compression which is a condition causing pain in the

nerves leading to the upper extremities. Additionally, IHS doctor David Price diagnosed her as suffering from pan myositis which is a general irritation of the trapezius, biceps, and triceps muscles. Dr. Price confirmed and continued Ms. Williams earlier medical restrictions caused by her CTS and further restricted Ms. Williams' activity by prohibiting any work above chest level, any extended reach or repetitive rotary or lateral movements of the head/neck. It was felt that Ms. Williams' problems were related to her employment.

Ms. Williams further sought treatment from Dr. Mark Smith, a board-certified orthopedic surgeon, who diagnosed her as suffering from myofacial pain caused by work. He restricted her from repetitive activity and stated that she should not be wiping highlight oil on from 450 to 500 auto shell bodies per shift because this would aggravate her condition. Ms. Williams' condition is objectively manifested by knotting and spasms of the muscles which Dr. Smith treated by trigger point injections. There also was an MRI showing peritendinitis of muscles surrounding the shoulder joint. Ms. Williams stated the shell body job caused the following symptoms:

> My shoulder starting getting some nerve–what they–it's like a tingling electricity in my arms again. My arms going to sleep, going dead at night, waking me up. My neck went to hurting me a lot. My neck just felt lazy, went to aching, and having pains in the back of my neck. My shoulders when raising my arms would seem like they were tiring out. They just–they were giving out when I would be trying to work. And at lunch every day, it got to the point to where my arms was just like going to sleep again on

> me. It'd take me an hour after we started back up working to get back to where I could do the job like I needed to.

Ms. Williams' impairment affects activities of daily living and curtails activities. She needs help in dressing herself.

She presented testimony from a vocational expert, William J. Weikel, who opined that as a result of her medical restrictions, she has lost access to 50% to 55% of the jobs in the economy.

Although Ms. Williams had been a successful Toyota employee for the three years approximately since her return in 1993, Toyota informed her that she would have to do the shell body job or be fired. She attempted to comply and thereby was injured further to the point she could not continue working. When she could not work, Toyota fired her under the guise that she had voluntarily resigned her employment by not coming to work.

DISTRICT COURT PROCEEDINGS

Toyota requested the District Court to enter a summary judgment in favor of Toyota to the effect that Ms. Williams was not "disabled." The District Court agreed and specifically held that Ms. Williams was not disabled as concerns the major life activity of performing manual tasks. The District Court's logic was that Ms. Williams' evidence of substantial limitations in performing manual tasks "are irretrievably contradicted by Plaintiff's continual insistence that she could perform the tasks in assembly and paint inspection without difficulty; positions requiring manual tasks."

SIXTH CIRCUIT PROCEEDINGS

In the Sixth Circuit, Ms. Williams advanced the proposition that she could be entitled to the protection of the ADA by proving she was disabled as concerns performing manual tasks and was not required to prove she was disabled as concerns the major life activity of working. She argued she obviously was substantially limited in the major life activity of performing manual tasks, and it was not necessary that she also prove she was disabled as concerns working. The Sixth Circuit agreed.[3]

The Sixth Circuit noted this Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 492 (1999) cautioned and mentioned the EEOC has found that the major life activity of working should not be considered if the individual is substantially limited in any other major life activity. App. 5a.

> In this case, the plaintiff's claim is not based solely on the difficult concept that she is disabled as to work generally, but rather, includes the rather simple concept that she is disabled as to performing manual tasks because she suffers from a severe impairment to her limbs, shoulders and neck that seriously reduces her ability to perform the manual tasks that are job-related.

Id. at 5a.

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3. The Sixth Circuit Opinion is appended to Toyota's Petition, and Ms. Williams will use the appendix pagination of the Opinion as found in Toyota's Petition when referring to the Sixth Circuit Opinion.

Therefore, having concluded that Ms. Williams is substantially limited in performing manual tasks, the Sixth Circuit saw no need to determine whether she was substantially limited as to the major life activities of lifting or of working. *Id.* at 5a. Likewise, the Sixth Circuit found it unnecessary to consider whether Ms. Williams made a satisfactory showing of being disabled under the alternate definitions of disability; § 12102(2)(B), having a record of an impairment or § 12102(2)(C), being regarded as having such an impairment. *Id.* at 6a.

The Sixth Circuit was well aware that in order for Williams to be disabled, the involved impairment must substantially limit or significantly restrict the major life activity involved. The words, *substantially limits*, were emphasized by the Sixth Circuit in its recitation of the impairment definition of disability. § 12102(2). App. 3a. It noted that the regulations require that impairments "substantially limit." *Id.* at 3a. Ms. Williams' impairment is described as "a severe impairment . . ." *Id.* at 5a. The Sixth Circuit specifically refers to the "significantly restricted" language found in the regulation and concludes that Ms. Williams suffers from an actual impairment "that substantially limits a major life activity . . ." *Id.* at 6a.

As to the District Court's finding that Ms. Williams was not disabled because she could perform some manual tasks, the Sixth Circuit said.

> The fact that Williams can perform a range of isolated, non-repetitive manual tasks performed over a short period of time, such as tending to her personal hygiene or carrying out personal or household chores, does not effect (sic, should be affect) a determination that her impairment substantially limits her ability to perform the range of manual tasks associated with an assembly line job.

Id. at 4a, parenthetical statement added.

This is consistent with the holding of *Bragdon* that "The Act addresses substantial limitations on major life activities, not utter inabilities." *Id.* at 641. An individual does not have to be totally disabled before he is entitled to the protection of the ADA.

The Sixth Circuit was concerned as to whether substantial impairment in the major life activity of performing manual tasks is sufficient to invoke the protection of the ADA without reference to whether that impairment affected working. Therefore, the Sixth Circuit required that Ms. Williams demonstrate her performing manual tasks disability "affects" her work. *Id.* at 4a and 6a.

Of course, it is obvious that an individual with Ms. Williams' restrictions will be affected in factory, production or other employment requiring repetitive manual tasks. It is appropriate that the impairment claimed always "affect" or be related to employment because this application of the ADA only relates to employment. § 12112(a). The ADA does not prohibit disability discrimination in social settings, and the Sixth Circuit takes care to emphasize that when disability is based upon a substantial impairment in a major life activity other than working, then there still must be a work or employment connection or "affect" between the non-working disability and the employment. This is the requirement of § 12112(a).

At no place does the Sixth Circuit suggest that an ADA disability exists simply because work is "affected" without regard to whether the impairment constitutes a substantial limitation of the major life activity of performing manual tasks.

The Sixth Circuit dissent deserves mention because it is the blueprint for Toyota's Petition herein.

This dissent mistakenly characterizes Ms. Williams' functional limitations as being a subset of abilities related to working. *Id.* at 11a.

Certainly, this is true, but the description is not complete. The limitations affect activities of daily living, and there was no attempt by Toyota to prove Ms. Williams was not substantially limited in performing manual tasks as compared to the general population.

The dissent asserts the majority opinion "conflates (and erodes)" the standards for demonstrating substantial limits on working and on performing manual tasks.

> Williams has not shown a substantial limitation in working, because the inability to perform a single, particular job is not a substantial limitation, and she has not demonstrated that there is a broader class of jobs from which her impairment disqualifies her. Nor has Williams shown a substantial limitation in performing manual tasks, because her limitation is mostly confined to a subset of job-specific tasks.

Id. at 11a.

Aside from the erroneous statement that no evidence was furnished as to disqualification for a broad range of jobs, William J. Weikel says loss of access to 50% to 55% of jobs; ironically the dissent conflates the requirements to be disabled for performing manual tasks by simultaneously requiring substantial limitation in the major life activity of working.

The dissent says there is no performing manual tasks disability because Ms. Williams' limitation is only for a subset of job-specific tasks which is contrary to the record. Hence, the dissent would say a more substantial limitation in working is necessary before an ADA disability can be found in a major life activity other than working. In other words, all impairments must constitute a substantial limitation in working before these non-working impairments can be the basis of an ADA impairment.

This is simply the wrong analysis; *Bragdon*, *Id.* at 631. Also, the consideration of the major life activity of working prior to or at lease in conjunction with consideration of other major life activities such as performing manual tasks is incorrect. *Sutton*, *Id.* at 492. Impairment in major life activities other than working should be considered first.

Finally, the Sixth Circuit rules Ms. Williams is disabled as defined by the ADA and returns the case to the District Court for trial only on the issue of whether Toyota failed to reasonably accommodate her disability. App. 6-7a.

TOYOTA'S PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED.

I.

Toyota's Petition claims the question presented is whether individuals whose impairments preclude them from performing only a narrow category of tasks associated with specific jobs are entitled to ADA protection. Petition, p. 1.

Although not presented as separate questions, Toyota also contends the Sixth Circuit committed serious error (1) by ignoring statutory and regulatory requirements that the impairment substantially limit a major life activity and (2) by violating what is incorrectly stated to be an almost universal rule that an inability to perform a single particular job is not entitled to ADA protection, regardless of the major life activity involved.

Toyota misstates the holding of the Sixth Circuit when Toyota contends the Sixth Circuit found ADA disability based solely upon an impairment from performing only a limited number of tasks associated with a specific job. Instead, the Sixth Circuit found a substantial limitation of the major life activity of performing manual tasks which was evidenced by Ms. Williams' inability to perform the physical functions required by her particular job. The major life activity of working was not involved, and Toyota's contention only has relevance when one is considering the major life activity of working.

The Sixth Circuit did not lower the standard of determining an ADA disability from one which requires that the impairment substantially limit a major life activity to one where it is required only that the impairment only "affect" a major life activity.

Instead, the Sixth Circuit held that regardless of what the major life activity was, the impairment must substantially limit that major life activity, and further, if the major life activity is one other than working, there must be a connection between the substantially limited major life activity and working; i.e., the impaired life activity must "affect" work.

Toyota misstates the law when it claims that all Courts have held the inability to perform a single particular job does not constitute an ADA disability, *regardless of the major life activity being considered.*

Toyota's Petition, p. 3, misstates the Sixth Circuit holding to be that even though Ms. Williams could perform a broad range of manual tasks, she is disabled because " 'her impairment substantially limits her ability to perform the range of manual tasks associated with *an* assembly line job.' *Id.* at 4a. (emphasis added)." Toyota's quoted language is taken out of context because the Sixth Circuit in the first part of the sentence partially quoted by Toyota is simply noting that the mere fact Williams can perform a range of isolated, non-repetitive manual tasks is not relevant to determination of whether she is ADA disabled. Of course, this is the holding of *Bragdon v. Abbott*, 524 U.S. 624 (1998) which specifically holds that in order for a substantial limitation to exist, it need not be complete or insurmountable, only significant. *Bragdon*, *Id.* at 641.

Toyota misstates the Sixth Circuit holding to be, "that Williams could demonstrate a *substantial limitation* on her ability to perform manual tasks by simply showing that her impairment 'affected' her ability to work–even if the impairment did not otherwise substantially limit her in the major life activity of working." Petition p. 7. The Sixth

Circuit held that in order for Ms. Williams to be disabled as concerns performing manual tasks, she must be substantially limited in performing manual tasks. In fact she did not have to be substantially limited in working, and the Sixth Circuit never considered whether she was substantially limited in working. Only Toyota believes one has to be disabled for working before there can be disability in another major life activity.

This is an important and perhaps subtle point. Individuals can be disabled as concerns major life activities other than working. In such cases, it is necessary that there be a causal link or nexus between the non-working disability and the employment before ADA protection attaches because the ADA only prohibits discrimination in employment. In fact, Toyota is arguing here that unless the impairment, whatever it might be, substantially limits the major activity of working instead of merely "affecting" the major life activity of working, there can be no disability. To follow Toyota's reasoning to its logical conclusion is to say that any disability which does not constitute a substantial limitation on the major life activity of working, but instead, merely affects working, is not entitled to protection under the ADA. The end result, if Toyota's reasoning is adopted, is that the only major life activity which can constitute an ADA disability is the major life activity of working.

Needless to say, Toyota's contentions are wrong and have been expressly rejected not only in the regulations but in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 492 (1999).

To the extent Toyota contends that it is legally established that CTS or like impairments cannot constitute ADA disabilities, such a contention is incorrect. This is

because each disability determination is made on an individualized basis. *Sutton*, *Id.* at 483. Section 12102(2) notes that disability is determined "with respect to an individual." CTS has been determined to be an impairment creating an ADA disability. *Quint v. A.E. Staley Mfg. Co.*, 172 F.3d 1 (1st Cir. 1999) and *Cravens v. Blue Cross And Blue Shield*, 214 F.3d 1011 (8th Cir. 2000).

Toyota's citation of case precedents does not support its contentions in this case. This is because the cited cases deal with individualized disability determinations which cannot be mechanically applied to individuals other than those involved in the particular cases. Additionally, Toyota is not sensitive to the major life activity at issue which is performing manual tasks.

At page 10 of the Petition Toyota relies upon *Chanda v. Engelhard/ICC*, 234 F.3d 1219 (11th Cir. 2000). In that case the claimant, a professional engineer was employed as a quality control technician which required cutting honeycomb-board with a utility knife and using a metal scraper to obtain test samples. He developed mysositis which is an inflamation of the wrist and forearm occurring on the right arm. He was discharged because he could not perform the cutting function of his job. He claimed a limitation on the major life activity of performing manual tasks including turning handles, grasping, holding or lifting objections, using a computer or writing with a pen. Yet, he could attend school and take classes which required the taking of notes, could perform the functions of a quality control engineer, which involved writing and computer use, and was able to conduct the activities of daily living. This evidence was held to not create an issue of whether Chanda was substantially limited in performing manual tasks. Interestingly, the instant case

is discussed in *Chanda* which notes that "the case-by case nature of the disability determination" makes the facts of the instant case distinguishable from *Chanda*. *Id.* at 1224. In fact, *Chanda* supports the Sixth Circuit result in this case by noting how severe Ms. Williams' impairment is.

At page 10 of Toyota's Petition, it cites *Hilburn v. Murata Electronics North America, Inc.*, 181 F.3d 1220 (11th Cir. 1999) in which the claimant stated that the only thing she was told that she could not do was lifting and she never identified specifically or by class any major tasks which she was unable to perform. *Id.* at 1228. In other words, this is a case where *no evidence* of impairment was presented.

At page 10 of the Petition, Toyota relies upon *Snow v. Ridgeview Medical Center*, 128 F.3d 1201 (8th Cir. 1997). This is also a "no evidence" case, "appellant has presented no evidence . . ." *Id.* at 1207.

At page 15 of the Petition, Toyota cites numerous cases for the proposition that an inability to perform in a single, particular job does not constitute a substantial limitation in the major life activity of working. Ms. Williams agrees with this general statement and notes that this result would be required by 29 C.F.R. § 1630.2(j)(3)(i).

Ms. Williams agrees that such an inability will not suffice to prove a substantial limitation on the major life activity of working, but Ms. Williams points out that a different major life activity, performing manual tasks, is involved here, and there is not and probably could not be in a logical sense such a requirement for the major life activity of performing manual tasks.

A brief review of Toyota's cited cases shows they are not relevant to the facts of Ms. Williams case. *Colwell v. Suffolk County Police Dept.*, 158 F.3d 635, 644 (2d Cir. 1998); "Evidence was insufficient to support finding that any of the officer's impairments were substantial, . . ."; *Santiago Clemente v. Executive Airlines, Inc.*, 213 F.3d 25, 30 (1st Cir. 2000), "Impairment not shown to have substantially inferred with her performance of any of the identified major life activities."; *Olson v. General Elec. Astrospace*, 101 F.3d 947 (3d Cir. 1996), only showed limitation for a single job and claim actually was denied because no evidence showed claimant to be "regarded as disabled."; *Halperin v. Abacus Technology Corp.*, 128 F.3d 191 (4th Cir. 1997), no evidence of substantial limitation; *Dutcher v. Ingalls Shipbuilding*, 53 F.3d 723 (5th Cir. 1995), no evidence; *McKay v. Toyota Motor Mfg., U.S.A., Inc.*, 110 F.3d 369 (6th Cir. 1997) only deals with major life activity of working; *Skorup v. Modern Door Corp.*, 153 F.3d. 512 (7th Cir. 1998), Plaintiff stated she could physically perform job, no medical proof of severe restriction, and only proof of inability to perform particular job; *Gutridge v. Clure*, 153 F.3d 898 (8th Cir. 1998), claimant was computer service technician who had to lift computer equipment but could not and found other employment in a job which did not require lifting, held, no evidence of substantial limitation as to working; *Broussard v. University of California, at Berkeley*, 192 F.3d 1252 (9th Cir. 1999), no evidence of impairment as to working; *Bolton v. Scrivner, Inc.*, 36 F.3d 939 (10th Cir. 1994), no evidence presented; *Standard v. A.B.E.L. Services, Inc.*, 161 F.3d 1318 (11th Cir. 1998), no evidence presented; and *Duncan v. Washington Metro. Area Transit Authority*, 201 F.3d 482 (D.C. Cir. 2000), no evidence presented.

II.

The Sixth Circuit decision does not conflict with this Court's recent precedent concerning the ADA.

Toyota claims the Sixth Circuit has held an ADA disability may be proven simply by showing that an impairment merely "affects" a major life activity instead of the impairment being required to substantially limit or significantly restrict a major life activity, citing *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555 (1999). Petition p. 18.

As noted previously, Ms. Williams agrees that the impairment must substantially limit the major life activity, and Ms. Williams agrees that *Albertson's* so holds.

The Sixth Circuit opinion also is in conformity with this principle.

However, Toyota misstates the Sixth Circuit holding to be, "a mere effect–not a significant restriction–on the major life activity of working is enough to demonstrate a substantial limitation on performing manual tasks." Petition p. 21.

The Sixth Circuit found that Ms. Williams was substantially limited in the major life activity of performing manual tasks. The Sixth Circuit opinion does not rest on a determination of whether Ms. Williams is substantially limited in the major life activity of working. The Sixth Circuit simply required that Ms. Williams' impairment in performing manual tasks affect her work, a requirement previously embodied in § 12112(a).

III.

There is no conflict among the circuits concerning an important and recurring issue that should be decided by this Court.

Toyota notes the increasing number of repetitive stress/ trauma injuries in the workplace (Petition pp. 22-23) and advances the proposition that individuals with the same sort of impairments should not be covered under the ADA in one part of the country but covered in another. Petition p. 24.

In essence, Toyota requests that a standard be adopted on a national basis that carpal tunnel syndrome and repetitive stress injuries cannot lead to a finding of disability under the ADA. While it is easy to understand Toyota's economic motives for suggesting such a standard, such a position is flatly rejected by the statute, § 12102(2) requiring that disability be determined "with respect to an individual–. . . , and this Court's holding, widely accepted, that a disability determination be an individualized determination." *Sutton, id.* at 483.

There is no indication that the ADA is being construed in anything other than a uniform manner as it is clear the disability determination is an individualized determination to be made on a case–by–case basis.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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